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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,646	09/30/2003	William G. America	YOR920030320US1 (16868)	4797
23389	7590	01/10/2006	EXAMINER	
SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			CHEN, JACK S J	
			ART UNIT	PAPER NUMBER
			2813	

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,646

Applicant(s)

AMERICA ET AL.

Examiner

Jack Chen

Art Unit

2813

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 26 October 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
4a) Of the above claim(s) 3,8 and 12-19 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,2,4-7 and 9-11 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

In response to the communication filed on 10/26/2005, claims 1-2, 4-7 and 9-11 are active in this application.

1. Applicant's election without traverse of species A-2 and B-1 in the reply filed on 7/22/2005 is acknowledged.
2. Claims 3, 8 and 12-19 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species/invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/22/2005.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-2, 4, 6, 10-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Faust et al., U.S./6,927,159 B2.

Faust et al. disclose an interconnect structure comprising: one or more interconnect levels, one on top of each other, each level comprising a organo-silicate glass (OSG) dielectric material 226/230 having a plasma treated surface layer 231 that provides improved adhesion to an overlying lower hardmask 254 (fig. 3G), yet is substantially undamaged, see figs. 1-3I and cols. 1-8 for more details.

Re claim 2, wherein the OSG dielectric material comprises a non-porous or porous material having a dielectric constant less than 3 (this is the intrinsic properties of the material).

Re claim 4, wherein the OSG dielectric material comprises a material of Si, C, O and H and having a dielectric constant less than about 3 (intrinsic properties of OSG).

Re claim 6, further comprising a dielectric cap layer 224/228 beneath said OSG dielectric material (fig. 3G).

Re claim 10, further comprising an upper hardmask 256 located atop said lower hardmask (fig. 3H).

Re claim 11, wherein said lower hardmask does not include a densified surface layer (fig. 3G).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

Art Unit: 2813

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 5, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faust et al., U.S./6,927,159 B2.

Faust et al. disclosed above; however, Faust et al. is silent to the OSG composition as recited in claim 5, the degree of adhesion as recited in claim 9 and the material for the lower hardmask as recited in claim 7.

Re claims 5 and 9, claimed ranges of the composition of OSG and the degree of adhesion, absent evidence of disclosure of criticality for the range giving unexpected results are considered to involve routine optimization while has been held to be within the level of ordinary skill in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select suitable composition for the OSG and the degree of adhesion in the device of Faust et al., since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. As noted in *In re Aller* 105 USPQ233, 255 (CCPA 1955), the selection of reaction parameters such as temperature and concentration, etc. would have been obvious. *See also In re Waite* 77 USPQ 586 (CCPA 1948); *In re Scherl* 70 USPQ 204 (CCPA 1946); *In re Irmscher* 66 USPQ 314 (CCPA 1945); *In re Norman* 66 USPQ 308 (CCPA 1945); *In re Swenson* 56 USPQ 372 (CCPA 1942); *In re Sola* 25 USPQ 433 (CCPA 1935); *In re Dreyfus* 24 USPQ 52 (CCPA 1934).

With respect to claim 7, using a dielectric layer comprises of Si, C, O and H for the hardmask have been known in the art. The selection of a known material based on its suitability

Art Unit: 2813

for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co., Inc. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). "Reading a list and selecting a known compound to meet known requirements is no more ingenious than selecting the last piece to put in the last opening in a jig - saw puzzle." 65 USPQ at 301.). Furthermore, the specification contains no disclosure of either the critical nature of the claimed material (i.e. – hardmask comprises a dielectric material of Si, C, O and H) or any unexpected results arising therefrom. Where patentability is said to be based upon particular chosen limitations or upon another variable recited in a claim, the Applicant must show that the chosen limitations are critical. *In re Woodruff*, 919 F.2d 1575, 1578 (Fed. Cir. 1990).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chen whose telephone number is (571)272-1689. The examiner can normally be reached on Monday-Friday (9:00am-6:30pm) alternate Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl W. Whitehead can be reached on (571)272-1702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2813

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack Chen
Primary Examiner
Art Unit 2813

January 9, 2006